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Supreme Court, U.S.
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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

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NAITRAM PERSAUD

*Petitioner*

v.

U. S. ATTORNEY GENERAL

*Respondent*

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On Petition for Writ of Certiorari
To the United States Court of Appeal for the Second Circuit

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Whether the Second Circuit Court of Appeal had jurisdiction pursuant to 8 U.S.C. § 1252(f)(2) to review the Petition for Review of Denial of Emergency Motion to Stay Removal where there is clear and convincing evidence that the execution of Petitioner's deportation order is prohibited as a matter of law since he had no notice of the Board of Immigration Appeals' decision in 1996 due to the ineffective assistance of his prior Counsel

## CORPORATE DISCLOSURE STATEMENT

No parties are corporations. Sup. Ct. R. 29.6

## TABLE OF CONTENTS


Question Presented for Review ..... i

Corporate Disclosure Statement ..... ii

Table of Contents ..... ii

Table of Authorities ..... iv

Petition for a Writ of Certiorari ..... 1

Opinions Below ..... 1

Jurisdiction ..... 1

Constitutional Provision and Statutes Involved ..... 1

Statement of the Case ..... 1

a. Background ..... 1

b. Course of Proceedings ..... 2

Reasons for Granting the Writ ..... 2

I. The Decision Below is Contrary to Law ..... 3

II. Petitioner Satisfies the Test for a Stay ..... 4

Conclusion ..... 6

Appendix ..... 1a

## TABLE OF AUTHORITIES

### CASES

Nken v. Holder, 129 S.Ct. 1749 (U.S. 2009).....5

Padilla v. Kentucky, 2010 Lexis 2928, *;
130 S.Ct. 1473; 176 L. Ed. 2d 284;
22 Fla. L. Weekly Fed. S 211 (U.S. 2010).....6

Persaud v. U.S. Attorney General, 10-888-ag
(2d Cir. 2010) .....1

### STATUTES

8 U.S.C. Sec. 1252(f)(2)..... 1, 1a

28 U.S.C. § 1254(1)..... 1, 1a

## PETITION FOR A WRIT OF CERTIORARI

Petitioner, Naitram Persaud, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeal for the Second Circuit.

## OPINIONS BELOW

The opinion of the Court of Appeal, Persaud v. U.S. Attorney General, 10-888-ag (2d Cir. 2010) (App. 2a) is not published. The Opinions of the Board of Immigration Appeals (App. 4a, 5a & 26a) are not reported. The Opinion of the Immigration Judge (App. 9a) is not reported.

## JURISDICTION

The denial of the Petition for Review of the United States Court of Appeals for the Second Circuit was issued on May 11, 2010. This Court has jurisdiction over this petition under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

8 U.S.C. Sec. 1252(f)(2): (App. 1a)

28 U.S.C. § 1254(1). (App. 1a)

## STATEMENT OF THE CASE

### a. Background

In 1995, The Petitioner sought political asylum before the Immigration Judge. The Immigration Judge denied his application but granted him voluntary departure. The Petitioner then appealed the decision to the Board of Immigration Appeals. The Board denied Petitioner's appeal

in 1996 but granted him voluntary departure. However, Petitioner's counsel at the time did not inform Petitioner of the Board's decision. Petitioner tried to contact his counsel but was unable to. In December 2009, Petitioner was detained by Immigration and Custom's Enforcement based on the 1996 deportation final order.

The Petitioner is claiming that his prior counsel's failure to notify him of the Board's decision was ineffective assistance of counsel and violated his right to due process where he could have appealed the Board's decision to the Court of Appeal. Petitioner is of the firm belief that he could have prevailed on his Petition for Review of the Board's 1996 denial decision due also to the ineffective assistance that his then counsel rendered to him during his cases before the Immigration Judge and the Board.

The Petitioner is filing this Petition for Writ of Certiorari where he believes that his deportation is prohibited as a matter of law because of the ineffective assistance of prior counsel due process violation and Petitioner must obtain a stay of his removal whilst his May 14, 2010 Petition for Review of the Board's May 12, 2010 denial of Motion to Reopen is pending. Petitioner's deportation is imminent as his Deportation Officer presently has Petitioner's travel document and the Government already sought to deport Petitioner on March 16, 2010 but were prevented from doing so by the Court of Appeals' Temporary Stay Order. That order was vacated on May 11, 2010.

**b. Course of Proceedings**

At his hearing before the Immigration Judge on April 7, 1995, Petitioner was granted voluntary departure. Petitioner appealed that decision to the BIA and on March 29, 1996, the appeal was dismissed. However, Petitioner was represented on appeal by former Counsel, Earl S. David,

whom Petitioner claims failed to inform him of the Board's decision.

Exceptional circumstances exist for the case to be reopened due to defective performance of Petitioner's prior Counsel, where Mr. David failed to apprise him of the outcome of his BIA appeal and so Petitioner had no notice as to the decision in his appeal case. Petitioner did exercise due diligence by trying to contact Attorney David about his case status, to no avail.

In December 2009, Petitioner was detained by Immigration and Customs Enforcement. On February 5, 2010, Petitioner filed with the Board of Immigration Appeals an Emergency Motion to Reopen Removal Proceedings and Emergency Motion for Stay of Removal. On March 11, 2010, Petitioner's Motion to Stay Removal was denied by the Board. On March 16, 2010, Petitioner filed a Petition for Review of Denial of Stay and Emergency Motion for Stay to the Court of Appeal for the Second Circuit. On that same date, the Court granted a Temporary Stay of Removal.

On May 11, 2010, the Petition for Review was denied and the Stay was vacated. On May 12, 2010 the Motion to Reopen was denied by the Board.

## REASONS FOR GRANTING THE WRIT

### I. The Decision Below is Contrary to Law

On May 11, 2010, the United States Court of Appeal for the Second Circuit denied the Petition for Review of the March 11, 2010 Board of Immigration Appeals Denial of Emergency Motion to Stay Removal. The Court of Appeal claims that it lacked jurisdiction, despite its authority under 8 U.S.C. § 1252(f) where there is clear and convincing

evidence that the execution of his deportation order is prohibited as a matter of law since he had no notice of the Board's decision in 1996 due to the ineffective assistance of his prior Counsel. See Padilla v. Kentucky, 2010 Lexis 2928, *; 130 S. Ct. 1473; 176 L. Ed. 2d 284; 22 Fla. L. Weekly Fed. S 211 (u.s. 2010).

The regulations at 8 U.S.C § 1252(f)(2) state:

> Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

**II. Petitioner Satisfies the Test for a Stay**

At his hearing before the Immigration Judge on April 7, 1995, Petitioner was granted voluntary departure. Petitioner appealed that decision to the BIA and on March 29, 1996, the appeal was dismissed. However, Petitioner was represented on appeal by former Counsel, Earl S. David, whom Petitioner claims failed to inform him of the Board's decision.

Exceptional circumstances exist for the case to be reopened due to defective performance of Petitioner's prior Counsel, where Mr. David failed to apprise him of the outcome of his BIA appeal and so Petitioner had no notice as to the decision in his appeal case. Petitioner did exercise due diligence by trying to contact Attorney David about his case status, to no avail. Padilla v. Kentucky, Id.. That is why the Petitioner presently has a petition for review pending before the Court of Appeal for the Second Circuit.

In December 2009, Petitioner was detained by Immigration and Customs Enforcement. On February 5, 2010, Petitioner filed with the Board of Immigration Appeals an Emergency Motion to Reopen Removal Proceedings and Emergency Motion for Stay of Removal. On March 11, 2010, Petitioner's Motion to Stay Removal was denied by the Board. On March 16, 2010, Petitioner filed a Petition for Review of Denial of Stay and Emergency Motion for Stay to the Court of Appeal for the Second Circuit.

On that same date, the Court granted a Temporary Stay of Removal. On May 11, 2010, the Petition for Review was denied and the Stay was vacated. On May 12, 2010 the Motion to Reopen was denied by the Board.

However, the Petitioner believes that the traditional test for granting relief, pursuant to Nken v. Holder, 129 S.Ct 1749 (U.S. 2009), is satisfied here. Under the traditional test, Petitioner must show that: 1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; 2) whether the applicant will be irreparably injured absent a stay, 3) whether issuance of a stay will substantially injure the other parties interested in the proceeding; and 4) where the public interest lies. Nken, 129 S.Ct at 1763-1764.

First, the Petitioner believes that he will prevail on his Petition for Review where his due process was violated by prior counsel's ineffective assistance.

Second, removal is imminent in this case, as stated supra. If Petitioner's imminent removal is not stayed, he will be removed from the United States to Guyana and suffer irreparable injury to himself and his family, which includes three minor, United States Citizen Children.

Third, the Government will not be prejudiced by a Stay of Removal and would be able to execute the order if Petitioner's claims for relief are not granted.

Fourth, it is in the interest of justice and not at all adverse to the public interest that Petitioner remain in the U.S. during the pendency of is Petition for Review where he has resided in the U.S. since 1992, he is married and has four Children--three of whom are United States Citizens, he has United States Citizen Parents, he is a business owner, he has dutifully paid his taxes, and he is a person of good moral character who is church-going and has done volunteer work in his community

Petitioner has two criminal cases pending concerning him and his estranged Wife, for: 1) Menacing in the Third Degree (November 27, 2009); and 2) Criminal Contempt 2nd (November 29, 2009). However, he has a Criminal Defense Attorney representing him in those cases and Petitioner is of the firm belief that he will prevail in those two cases and that he will not be convicted

**CONCLUSION**

The Second Circuit Court of Appeal erred in denying the Petitioner's appeal of the BIA's denial of his motion to stay removal because his removal is enjoined as a matter of law where there was a due process violation when Petitioner's prior counsel was ineffective in his assistance to Petitioner.

Petitioner had no notice that his appeal to the Board in 1996 had been denied and had he known, he could have appealed that decision to the Court of Appeal where he believes that the outcome of his case would have been different. He tried to contact his prior counsel but was unable to do so

Petitioner satisfies the test for a stay of removal and should be granted a stay where the Court of Appeal for the Second Circuit erred in denying his petition for review of the denial of the motion to stay removal, and Petitioner has pending presently before the Court of Appeal a petition for review of the BIA's denial of the motion to reopen.

Petitioner respectfully asks this Honorable Court to please grant this petition for a writ of certiorari.

Respectfully submitted,

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## APPENDIX

**8 U.S.C. Sec. 1252(f)(2)** states:

> Notwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

**28 USC Sec. 1254**:
Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11' day of May, two thousand ten,

Present:
Dennis Jacobs,
*Chief judge,*
Ralph K. Winter,
Joseph M. McLaughlin,
*Circuit Judges.*

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Naitram Persaud,
*Petitioner,*
v. 10-888-ag
U.S. Attorney General,
*Respondent.*

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The Government moves to dismiss the petition for review for lack of jurisdiction, and to vacate Petitioner's stay of removal. Upon due consideration, it is hereby ORDERED that the Government's motion is GRANTED, the petition for review is DISMISSED, and Petitioner's stay of removal is VACATED. This Court lacks jurisdiction to review the denial of a motion for a stay of removal. *Vlassis v. I.N.S.*, 963 F.2d 547, 549 (2d Cir. 1992).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

UNITED STATES SECOND CIRCUIT

Catherine O'Hagan Wolfe

2a

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 16th day of March, two thousand and ten.

Before: Robert A. Katzmann,
*Circuit Judge.*

Naitram Persaud,
*Petitioner,*

*v.*

Eric H. Holder Jr., United States Attorney General,
*Respondent.*

ORDER
Docket No. 10-888

IT IS HEREBY ORDERED that Petitioner Persaud's emergency motion for stay of removal is GRANTED.

FOR THE COURT:
CATHERINE O'HAGAN WOLFE, Clerk By:

Catherine O'Hagan Wolfe

Joy Fallek, Administrative Attorney

**U.S. Department of Justice** **Decision of the Board of Immigration Appeals**
**Executive Office for Immigration Review**
**Fairs Church, Virginia 22041**

File: A073 540 452 - New York, NY Date: March 11, 2010
In re: NAITRAM PERSAUD
IN DEPORTATION PROCEEDINGS
MOTION
ON BEHALF OF RESPONDENT: Georgia B. Gillett, Esquire
APPLICATION: Stay of Removal
Counsel for the respondent has applied for a stay of removal pending consideration by the Board of a motion to reopen. After consideration of all information, the Board has concluded that there is little likelihood that the motion will be granted. Accordingly, the request for a stay of removal is denied.
ORDER: The request for stay of removal is denied.

FOR THE BOARD

**U.S. Department of Justice** **Decision of the Board of Immigration Appeals**
**Executive Office for Immigration Review**
**Fairs Church, Virginia 22041**

File: A73 540 452 - New York Date:
In re: NAITRAM PERSAUD MAR 29 1996
IN DEPORTATION PROCEEDINGS APPEAL
ON BEHALF OF RESPONDENT: Charles Finkelstein, Esquire
Law Offices of Earl David 40 Wall Street, Suite 6000 New York, New York 10005
ON BEHALF OF SERVICE: Randa Zagzoug
General Attorney
CHARGE:
Order: Sec. 241(a)(1), I&N Act [8 U.S.C. § 1251(a)(1)] - Excludable at entry under section
212(a)(6)(C)(i), I&N Act [8 U.S.C.
§ 1182(a)(6)(C)(i)] - Fraud or willful misrepresentation of a material fact
APPLICATION: Asylum; withholding of deportation
ORDER:
PER CURIAM. We have jurisdiction over this timely appeal pursuant to 8 C.F.R. § 3.1(b). The only issue on appeal is whether the Immigration Judge correctly denied the respondent's applications for asylum and withholding of deportation under sections 208(a) and 243(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1253(h). We find that the Immigration Judge's resolution of this issue was correct, and dismiss this appeal.
On appeal, the respondent contends that the Immigration Judge erred in denying his applications for asylum and withholding of deportation. In his Notice of Appeal, he states:

5a

Applicant testified that he feared to return to his native country due to his political activities in Guyana. The court found applicant credible but lacking documentation. Based on law and cases, court can grant asylum based on credibility of applicant. Moreover, due to the expedited asylum process, applicant didn't have time to receive his evidence. As such, the new practice is highly prejudicial and discriminatory to the asylum applicants. Please review this case.

The respondent contends that due to the expedited asylum process he did not have time to receive his evidence. However, we note that respondent's counsel was in the case from the beginning. He asked for and got two weeks to file a new I-589 (tr. at 4), and did not object to an April 7 hearing at the time the I-589 was accepted into evidence (tr. at 7-10). Furthermore, the first I-589 was filed with the Immigration and Naturalization Service on January 5, 1995, and there is no reason given as to why supporting documents couldn't be obtained by April 7. The respondent also claims that the expedited process is discriminatory and prejudicial. The respondent, however, has not shown prejudice as he has not identified what evidence he would have presented.

The respondent bases his claim on his membership of the People National Congress (PNC) and participation in the demonstrations in 1992. The respondent testified that he participated in a demonstration in 1992 by holding a banner and distributing flyers, and that people were arrested by the police and injured (tr. at 24-25). The respondent stated that he was not injured and managed to escape (tr. at 25). The respondent also mentioned that a guard of the Prime Minister and four people who participated in the demonstration were killed. However, the respondent was not sure who killed them (tr. at 44-45).

We find on review that the respondent, a 27-year-old single, male native and citizen of Guyana, has failed to meet his evidentiary burden of proof. The respondent has failed to show that the PNC exists, let alone that the government has concerns over its politics. The respondent has also failed to show why a person with respondent's low level of political participation will be so sought after. In the absence of corroborating documentary evidence, the applicant has failed

to meet his burden of proof in establishing his claim to asylum or withholding of deportation under sections 208 and 243(h) of the Immigration and Nationality Act. *See* Matter of Mocharrabi, 19 I&N Dec. 439 (BIA 1987); Matter of Dass, 20 I&N Dec. 120 (BIA 1989).

Accordingly, the appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and in accordance with our decision in Matter of Chouliaris, 16 I&N Dec. 168 (BIA 1977), the respondent is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the district director; and in the event of failure so to depart, the respondent shall be deported as provided in the Immigration Judge's order.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
New York, New York

File No.:A 73 540 452 April 7, 1995

In the Matter of
NAITRAM PERSAUD,IN DEPORTATION PROCEEDINGS
Respondent

CHARGE: Section 212(a)(1)(A) of the Immigration and Nationality Act

APPLICATIONS: Section 208, INA-Asylum; Section 243(h), INA Withholding of Deportation; Section 244(e), INA-Voluntary Departure

ON BEHALF OF RESPONDENT: Charles Finkelstein, Esquire Law Offices of Earl David
40 Wall Street, Suite 6000 New York, New York 10005

ON BEHALF OF THE GOVERNMENT: Randa Zagzoug
General Attorney

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 27-year-old male native and citizen of Guyana, who entered the United States on December 8th, 1992 at or near Buffalo, New York, using a passport not belonging to himself. On March 3rd, 1995, an Order to Show Cause was issued against respondent and served on this Court on March 10th, 1995, charging respondent as being deportable from the United States under the charge of Section 241(a)(1)(A) of the Immigration and Nationality Act. At a master calendar hearing held on April 4th, 1995, the respondent admitted to the grounds of deportability as charged. Having admitted to such ground of deportability,

respondent's deportability *has been established by* clear, convincing and unequivocal evidence. Woodby v. INS, 385 U.S. 276 (1966) and 8 C.F.R. Section 242.14(a).

Having admitted to the grounds of deportability, respondent has asked for the reliefs of asylum pursuant to Section 208 of the Act, withholding of deportation to Guyana pursuant to Section 243(h) of the Act, and voluntary departure from the United States pursuant to Section 244(a) of the Act.

Respondent designated, as country of deportation pursuant to Section 243(a) of the Act, England, should such action become necessary, the Service in the alternative designated Guyana and, at the prior master calendar hearing before Immigration Judge Cassidy, both of those countries were designated for deportation with England taking preference and Guyana being designated in the alternative.

In order to qualify for withholding of deportation to a particular country, an applicant must demonstrate that his life or freedom would be threatened there on account of his race, religion, nationality, membership in a particular social group or political opinion. Section 243(h) of the Act. The Supreme Court has held that this requires an applicant to meet the clear probability standard, i.e. to show that persecution is more likely than not to occur. INS v. Stevic, 467 U.S. 407 (1984).

An applicant for asylum must demonstrate that he is unwilling to return to his homeland because of persecution or a

well-founded fear of persecution by the government or a group that the government cannot control, based on the above-enumerated grounds. Section 208 of the INA. The Supreme Court has held that an applicant for asylum must demonstrate an actual and genuinely-held subjective fear of persecution and further show that this fear is objectively reasonable, i.e. well-founded. ;INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). The Board of
Immigration Appeals has stated that an applicant for asylum has established a well-founded fear if he demonstrates that a reasonable person in similar circumstances would fear persecution if returned to his or her native country. Matter of Mogharrabi, Int. Dec. 3028 (BIA June 1987), 19 I&N *Dec.* 439 (BIA 1987). Past persecution alone is sufficient to meet the refugee definition applicable to asylum cases. Matter of Chen, Int. Dec. 3104 (BIA 1989); 8 C.F.R. Section 208.13(b)(1). Once past persecution is demonstrated, the likelihood of future persecution becomes relevant in the exercise of discretion. Ibid.
An asylum applicant's testimony is extremely important since individuals applying for such relief are often limited in the additional evidence they can obtain to prove past or future persecution. An alien's own testimony, without corroborative evidence, may be sufficient to prove a well-founded fear of persecution where that testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for the fear. Mogharrabi, supra. However, it is

not inappropriate to require corroborating testimony or documentation when it could reasonably be assumed to be available. Matter of Dass, Int. Dec. 3122 (BIA 1989). However, persecution or a well-founded fear of persecution standing alone is insufficient to establish eligibility for asylum. The statute requires that such harm be on account of one of the specific grounds enumerated in the Act, i.e. a nexus to a protected ground must be shown. INS v. Elias-Zacarias, 502 U.S. 478 (1992). Finally, even if statutorily eligible for relief, an asylum applicant must demonstrate that he merits the favorable exercise of discretion.

The applicant's I-589 application for asylum today was not accompanied by any supporting documentation at all. In fact, the attorney for the INS offered into evidence the latest country report for 1994 of the U.S. Department of State covering Guyana, and respondent's counsel objected to it being offered into evidence and in fact it was not offered into evidence. However, the court takes note that such document is a matter of public record, that it is commonly referred to even if it was not submitted into evidence by the Board. For example, *see* Matter of Izeatula, Int. Dec. 3127 (BIA 1991). In addition, the Government properly cited Matter of Exame, 18 I&N Dec. 303 (BIA 1992), for the fact that such document may properly be referred to by immigration judges and the BIA in deciding asylum cases, even where such document was not offered into evidence.

Regardless, respondent testified to the following facts before the judge today. He testified that he is a 27-year-old and that he has been in the United States since December 1992, i.e. since the age of 24. Respondent testified that in his native country of Guyana he had been employed as the driver to the prime minister of the People's National Congress (PNC). Respondent testified that he became "politically active" with the PNC in 1990. Respondent testified that the PNC basically believed that all people were equal in the eyes of the law and that at the time he became active, the government basically believed the same thing. However, he testified that the government later changed in Guyana and that, since that time, he has not found equal treatment of all under the present government that remains in Guyana up to this time.

Respondent testified that as a result on November 6, 1992, he participated in a demonstration along with approximately 300 others against the present government. Respondent testified that at that demonstration, he held a banner and participated in the distribution of flyers. Respondent testified that police and soldiers came and arrested numerous of the demonstrators and that some of the demonstrators were beaten with batons by the police. Respondent and many of the others fled and managed to escape arrest. Respondent testified that he fled into the interior, which he described as the forest, where he fled with about twelve others. However, respondent knew that one PNC member, Marcy

Reese, who had been a guard at the house of the PNC prime minister, was arrested and questioned by the police and respondent testified that she provided the police with his name. She was released from jail and then was killed shortly thereafter, although respondent did not know who killed her and was able to provide no details surrounding her murder. However, he assumed it was the government that killed her. Respondent said he knew that this individual had provided his name to the police because some of his friends who were in prison at the time had informed their relatives who visited them in jail and those relatives had informed respondent's parents and respondent's parents had informed him of this. Respondent testified that the government had his picture because in Guyana everyone is forced to carry a picture ID card and that, because of that, they would definitely know who he was and would be looking for him as someone who participated in the demonstrations. Respondent also testified that nearly everybody knows everybody else by sight in Guyana as the population is under a million and those people living in the coastal areas all know each other. Respondent testified that prior to participating in the demonstration he had attended a total of two meeting of the PNC.

After hiding in the forest for a while, respondent, with the help of a friend, fled to Canada. He spent one day in Canada and then entered the United States, apparently using a

passport not belonging to himself. Respondent testifies that he actually has a legitimate Guyanese passport but not with him. It is still with his parents in Guyana. Respondent testified that about a month after he left, four of the twelve people that were hiding with him in the forest were found dead in the forest, although he does not know who killed them and has no information about the killings. *He* says that he heard about the killings because he called by phone to his parents in Guyana and they apparently provided this information. The parents also told him that it was unsafe for him to return to Guyana still, that the government would still have his picture and would still be looking for him as a demonstrator.

Respondent testified that if he were returned to Guyana, he would be arrested, that in Guyana he would have no right to a lawyer under Guyanese law, that there are no jury trials in Guyana, that being held in a Guyanese prison is worse than anything that one could imagine. Respondent also testified that, to his knowledge, the prime minister who he drove is still living in Guyana, in a place called East Runfield or Runfeld and to his knowledge has not been harmed. Respondent also testified that police had come to his parents' house and had searched the house looking for him after he left the country.

In order to be eligible for asylum, the Supreme Court in Cardoza-Fonseca, supra, held that two elements had to be proven. The first is that the applicant had to demonstrate a

genuine, subjective fear of persecution if returned to his country. And secondly, if such subjective fear was demonstrated, an objective fear also had to be shown that, in other words, such fear of such persecution as applicant claimed was grounded in reality. In addition, the Court wants to point to the case Matter of Dass, supra, which was very clear in its statement that providing supporting documentation in asylum cases is not purely optional, although Matter of Moctharrabi, supra, states that under certain circumstances, an applicant may meet his burden of proof through his testimony alone. Matter of Dass, a later case, stated, that that would only be the case where it has been shown that such documentation was not available. Matter of Dass also stated that it is important and it may well be required that reports relating to country conditions in applicant's home country would be necessary in order for the Court to decide cases.

I take note that in this case absolutely no supporting documentation of any type was provided. Respondent has not submitted his passport or a copy of his passport even to prove his own identity. Respondent was questioned on cross-examination as to whether he ever held a card, a membership card of the PNC, or any other type of documentation showing his membership in that particular party, and the respondent testified that he had never had such documents and that the party did not use such documents, he believed in part because everyone knew each other in Guyana

and in part because the party could not afford to issue such documents.

Although the government is supposedly searching for respondent, there was no search warrant or anything else offered to show that, although the Court takes note that it is not common that a government would provide such documentation in such cases. However, more importantly in the opinion of the Court, nothing was offered in terms of newspaper articles, reports from human rights groups, reports from the U.S. Department of State, expert testimony or affidavits, copies of letters sent from parents, friends' testimony who may have known respondent in his home country and known of his activities. None of these were offered to the Court in support of the asylum application, and no explanation was given to the Court as to why none of these documents would be offered.

The burden of proof is on the applicant in an asylum application. The only source of information that this Court can refer to about Guyana is the U.S. Department of State report that was not entered into evidence, but which was made available to the Court by the INS today. As the INS attorney pointed out in her closing arguments, that report does state that problems are going on in Guyana, that there is police brutality, police beatings, that there have been some suspicious murders committed by police. However, the attorney for respondent himself noted that such similar circumstances have been seen to happen in the

United States as well, and I don't believe that he was saying that people fearing such attacks in the United States should be entitled to asylum elsewhere. I am not saying that Guyana is a wonderful country. It probably is in many ways -- it is in many ways worse than the United States in terms of rights, in terms of police brutality, and in other areas. But that alone does not entitle an individual from Guyana to asylum. The respondent testified that he participated in one demonstration along with 300 other people and besides from that had attended only two other meetings. The Court would be curious as to why somebody with such limited political involvement would still be sought for participating in a demonstration some three years ago in Guyana. The Department of State country report makes no mention of the PNC at all, which doesn't really mean anything, but the point is that, as respondent provided no information about the PNC, I can't really say that I've been persuaded that the PNC certainly is a group that is being persecuted by the government.

A respondent can prove eligibility if they can demonstrate that a pattern or practice of persecution is being committed against a particular group of individuals in applicant's home country and if the asylum applicant can show that he would be included in and identified with such group and again, there was not sufficient documentation -- there was no documentation offered to the court -- to show any type of pattern or practice or to show that applicant is included in or overtly

identified with the PNC.
In addition, the Department of State country report states that, although the law recognizes the right to legal counsel in practice, although it follows to say with the exception of capital crimes, it has been limited to those who can afford to pay, saying that only murder victims are entitled to pro bono representation. However, no testimony today demonstrated that respondent would be unable to pay counsel. The State Department report also says that, on page 416, the constitution provides that anyone charged with a criminal offense has the right to a hearing by a court of law and the authorities respect this right in practice.
The report also, I believe, makes mention of cases being thrown out of court where questionable police activity had occurred. Again, I am not stating that I am accepting everything that the Department of State report says, and I am not saying that those statements that I just referred to in the Department of State report means that no one or that respondent would not face mistreatment if returned to Guyana. However, respondent has not offered anything to dissuade me, to prove to me otherwise, and the burden of proof is on the respondent to do such in an asylum case. Although the respondent testified that there were some murders committed against members of the PNC, no nexus in the eyes of this court were shown between those murders and any of

the five enumerated grounds in the Act. Although respondent believes that the murders were committed by the police due to those individuals' affiliation with the PNC, he was very sketchy in his description and, again, no newspaper articles, human rights reports, or other documentation was provided to provide more detail about those killings.

Therefore, for all of the above reasons, I find that respondent has failed to meet his burden of proving a well-founded fear of persecution. I also find that he has not demonstrated past persecution in Guyana on account of any of the five enumerated grounds. Having found that respondent failed to meet the requirements of statutory eligibility, I do not need to address the issue of whether he is eligible for asylum as a matter of discretion. Furthermore, having found that he failed to meet the burden of well-founded fear under section 208, it follows that he has failed to meet his burden of proof under section 243(h) of the Act for withholding, which requires a higher standard of clear probability of persecution. Matter of Stevic, supra.

However, respondent has, through his testimony, demonstrated eligibility for the relief of voluntary departure. In accordance with above findings, I will enter the following orders:

ORDER

IT IS HEREBY ORDERED that the application for asylum

pursuant to section 208 of the Act *be* denied;
IT IS FURTHER ORDERED that the application for withholding of deportation to Guyana pursuant to Section 243(h) of the Act be denied;
IT IS FURTHER ORDERED that the application for voluntary departure be granted for a period of ninety days and that, should respondent fail to depart the United States within that period of time, that an alternative order of deportation to England and, if that should be impossible, in the alternative, to Guyana be entered without any further notice.
DATED: April 7, 1995.
JEFFREY S. CHASE
Immigration Judge
A 73 540 452 13 April 7, 1995

U.S. Department of Justice
Immigration and Naturalization Service
Order to Show Cause and Notice of Hearing

ORDER TO SHOW CAUSE AND NOTICE OF HEARING
(ORDEN DE PRESENTAR MOTIVOS JUSTWICANTES Y AVISO DE AUDIENCIA)
In Deportation Proceedings under section 242 of the Immigration and Nationality Act.
(En los procedimentos de deportacion a tenor de la section 242 de la Ley de Immigracion y Nacionalidad.)
United States of America:
(Estados Unidos de America:) File No. (No. de registro)
73 540 452

Dated (Fechada)
3, MAR 1995
3 DE MARZO, 1995

In the matter of PERSAUD, NAITRAM (Respondent)
(En el asunto de) (Demandado)
Address 89 13 209TH ST
(Direccion) QUEENS VILLAGE, NY 11427
Telephone No.(Area Code)
(No. de telefono y codigo de area)

Upon inquiry conducted by the Immigration and Naturalization Service, it is alleged that:
(Segue las indagaciones realizadas por el Servicio de Intnigracion y Naturalization, se alega que:)
A, 1) You are not a citizen or national of the United States;
(Ud. no es ciudadano o nacional de los Estados Unidos)

A2) You are a native of GUYANA (Ud. es nativo de) and a citizen of GUYANA(y ciudadano de)

22 a

U.S. Department of Justice
Immigration and Naturalization Service
Order to Show Cause and Notice of Hearing

3) You entered the United States at or near BUFFALO, NY (IA) (Ud. entro a los Estados Unidos en o cerca de) on or about" December 8, 1992 ;(el dia o hacia esa fecha) 8 de Diciembre 1992

A4. At that time you entered as a visitor;
*(En ese momento Ud entro como visitor)*

A5. You procured your entry by fraud or by willfully misrepresenting a material fact, to wit the documents you used to secure your entry were not your own; you pretended to be someone else.
*procuro su entrada mediante fraude o con la presentation intencionadamente falsa de un hecho importance, a saber los documentes para entrada no es.su documentes; Ud impersonator).*

23 a

U.S. Department of Justice
Immigration and Naturalization Service
Order to Show Cause and Notice of Hearing

NOTICE OF RIGHTS AND CONSEQUENCES

The Immigration and Naturalization Service believes that you are an alien not lawfully entitled to be in or to remain in the United States. Read this notice carefully and ask questions about anything in this notice you do not understand. This notice identifies your rights as an alien in deportation proceedings, and your obligations and the conditions with which you must comply in order to protect your *eligibility* to be considered *for* certain benefits.

Any statement you make before an Immigration Officer may be used against you in any immigration or administrative proceeding.

You may be represented, at no expense to the United States government, by an attorney or other individual who is authorized and qualified to represent persons in these proceedings. You will be given a list of organizations, attorneys and other persons who have indicated their availability to represent aliens in these proceedings. Some of these persons may represent you free of charge or for a nominal fee. You may also be represented by a friend, relative, or other person having a pre-existing relationship with you, provided his or her appearance is permitted by the immigration judge.

You will have a hearing before an immigration judge, scheduled no sooner than 14 days from the date you are served with this Order to Show Cause (unless you request in writing an earlier hearing date). The fourteen-day period is to allow you to seek an attorney or representative, if you desire to be represented. At your hearing, you will be given the opportunity to admit or deny any or all of the allegations in this Order to Show Cause, and whether you are deportable on the charges set forth herein. You will have an opportunity

to present evidence and/or witnesses on your own behalf, to examine evidence presented by the government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the government. Any document that you present that is in a foreign language must be accompanied by a certified English translation. It is your responsibility to ensure that any witnesses you wish to present on your own behalf be present at the hearing.

The immigration judge will advise you regarding relief from deportation for which you may be eligible. You will be given a reasonable opportunity to make an application for any such relief. If you are not satisfied with the decision of the immigration judge, you have the right to appeal. The immigration judge will provide you with your appeal rights.

AVISO DE DERECHOS Y CONSECUENCIAS

El Servicio de Inmigracion y Naturalization opina que Ud. es un extranjero sin derecho legal a estar o permanecer en los Estado Unidos. Lea este aviso cuidadosamente y pregunte acerca de cualquier parte del mismo que no entienda. Este aviso le explica los derechos que tiene como extranjero en los tramites de deportacion, y las obligations y condiciones que debe cumplir con el fin de *proteger su derecho a que se* le *considere pare* recibir ciertos beneficios.

Las declaraciones que Naga ante un funcionario del Servicio de Inmigracion podran usarse en su contra en cualquier tramite administrativo o de inmigracion.

Ud. puede ser represented°, sin costo alguno pare el gobierno de los Estado Unidos, por un abogado o otra persona autorizada y calificada pare representar personas en estos tramites. Ud. recibira una lista de las entidades, abogados y demas personas dispuestas a representar a extranjeros en estos tramites. Algunas de eras personas pueden

representarle gratuitamente o por honorarios nominales. Tambien puede representarle un amigo, familiar o otra persona con la que tenga una relation establecida, siempre que el juez de inmigracion permits su comparecencia.

Ud. tendra una audiencia ante un juez de inmigracion, fijada con un minimo de 14 dial a partir de la fecha que se le expidio esta Orden (a menos que Ud. solicite por escrito una audiencia en plazo aim menor). El plazo de catorce dies le permitira conseguir los servicios de un abogado o representante, si lo desea. En la audiencia se le dam la oportunidad de admitir o negar cualquiera de los alegatos de esta Orden o todos ellos, y se le informara si este sujeto a deportacion por los cargos expresados en la misma. Ud. tendra la oportunidad de presenter pruebas y testigos a favor suyo, de examiner las pruebas presentadas por el gobierno, de oponerse, con base en los razonamientos legates pertinentes, a la admision de pruebas y de interrogar a cualquier testigo del gobiemo. Todo documento que presente en un idioma extranjero debe it acompanado de una traduccion certificada al ingles. Sera responsabilidad suya asegurarse de que cualquier testigo suyo comparesca a la audiencia.

El juez de inmigracion le informara sobre los recursos de deportacion a los que tenga derecho y se le dam una oportunidad adecuada pars solicitarlos. Si no este de acuerdo con la decision del juez, puede apelarla. El juez de inmigracion le informara acerca de sus derechos de apelacion

U.S. Department of Justice
Immigration and Naturalization Service
Order to Show Cause and Notice of Hearing

Continuation Sheet
(Hoja complementaria)
Dated 03 MAR 1995
(Fechada) 3 de marzo,1995

Respondent PERSAUD, NAITRAM
(Demandado)

File No. 73 540 452
(No. de registro)

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:
(Y segun los alegatos anteriores, se le acusa de ester sujeto a deportation de acuerdo con la(s) siguiente(s) disposicion(es) de la ley:)
Section 2'(1 (a)(1)(A) of the Immigration and Nationality Act (Act), as amended, in that at thetime of entry or of adjustment of status, you were within one or more of the classes of aliens excludable by the law wexisting at such time, to wit: aliens wo seek to procure, or have sought to procure, or who have procured a visa, other documentation, or entry into the United States, or other benefit provided under the Act, by fraud or by willfully misrepresenting a material fact, under section 212(a)(6)(C)(i) of the Act.
*(Section 241 (A)(1)(A) de la Ley de Inmigracion y Nacionalidad (INA), segun enmendada, en que en el momento de entrada o ajuste de condition, Ud pertencia a una o mas de las clases de extranjeros que solicitan procurar, o han solicitado procurar, o que han procurado una visa,*
*otra documentation, or entrada a los Estados Unidos, o otro beneficio previsto en las INA, mediante fraude o mediante la*

27a

*presentation intencionadarnente falsa de un hecho importante a tenor de la section 212 (a)(6(C)(i) de la INA).*

WHEREFORE, YOU ARE ORDERED to appear for a hearing before an Immigration Judge of the Executive Office for Immigration Review of the United States Department of Justice at:
(POR LO CUAL, SE LE ORDENA comparecer ante un juez de inmigracion de la Oficina Ejecutiva de Revision de Inmigracion del Departamento de Justicia de los Estados Unidos en:)
Address 26 FEDERAL PLAZA
ROOM 13130, NEW YORK, NY 10278
(Direction)
On 21 March 1995 At 930AM
(Fecha) 21 Marzo1995 (Hora) 0930AM
and show cause why you should not be deported from the United States on the charge(s) set forth above.
(y mostrar motivos justificarAs misual no deveria ser deportado de los Estados Unidos por los cargos expresados anteriormente.)
Dated 03 March 1995
(Fechada) 3 de Marzo 20, 1995
Signature of Issuing Officer _____
(Firma del funcionario que la expide
City and State of Issuance ROSEDALE, NY
(Ciudad y Estado donde se expide)
Title of Issuing Officer _____ Supervisory Asylum Officer
(Titulo del funcionario que la expide)

You are required to be present at your deportation hearing prepared to proceed. If you fail to appear at any hearing after having been given written notice of the date, time and location of your hearing, you will be ordered deported in your absence, if it is established that you are deportable and you have been provided the appropriate notice of the hearing.

You are required by law to provide immediately in writing an address (and telephone number, if any) where you can be contacted. You are required to provide written notice, within five (5) days, of any change in your address or telephone number to the office of the Immigration Judge listed in this notice. Any notices will be mailed only to the last address provided by you. If you are represented, notice will be sent to your representative. If you fail to appear at the scheduled deportation hearing, you will be ordered deported in your absence if it is established that you are deportable and you have been provided the appropriate notice of the hearing.

If you are ordered deported in your absence, you cannot seek to have that order rescinded except that: (a) you may file a motion to reopen the hearing within 180 days after the date of the order if you are able to show that your failure to appear was because of exceptional circumstances, or (b) you may file a motion to reopen at any time after the date of the order if you can show that you did not receive written notice of your hearing and you had provided your address and telephone number (or any changes of your address or telephone number) as required, or that you were incarcerated and did not appear at your hearing through no fault of your own. If you choose to seek judicial review of a deportation order entered in your absence, you must file the petition for

review within 60 days (30 days if you are convicted of an aggravated felony) after the date of the final order, and the review shall be confined to the issues of validity of the notice provided to you, the reasons for your failure to appear at your hearing, and whether the government established that you are deportable.

In addition to the above, if you are ordered deported in your absence, you are ineligible for five (5) years from the date of the final order for the following relief from deportation: voluntary departure under section 242 (b) of the Immigration and Nationality Act (INA); suspension of deportation or voluntary departure under section 244 of the INA; and adjustment of status under sections 245, 248, and 249 of the INA.

The copy of this Order to Show Cause served upon you is evidence of your alien registration while you are under deportation proceedings. The law requires that you carry it with you at all times.

Esta obligeº a asistir a la audiencia deportacion y de ester preparedº pare ella. Si no asiste a cualquiera de las audiencias despues de haber sido notificado por escrito de la fecha, hors y Lugar de In audiencia, *se* ordenara su deportacion en su ausencia, si se establece que puede ser deportedº y que recibio los avisos correspondientes.

La ley le oblige a informer inmediateamente por escrito de su domicilio (y numero de telefono, de haberlo) donde pueda ser localizado. Tiene la obligation de notificar por escrito, en el plazo de cinco (5) dias, cualquier cambio de domicilio o de telefono a la oficina del juez de inmigracion qu aparece en este aviso. Los avisos se enviaran solamente a la ultima direccion facilitada por Ud. Si ha decidido tener un representante, se enviaran los avisos a dicha persona. Si no

asiste a cualquiera de las audiencias despues de haber sido notificado por escrito de la fecha, hors y Lugar de las mismas, se ordenara su deportacion en su ausencia, si se establece que puede ser deported° y que recibio el aviso de la audiencia.

Si se ordena su deportacion en su ausencia, no padre solicitor la anulacion de esa orden salvo que: (a) pueda presenter un pedimento pars tener otra audiencia en el plazo de 180 dias despues de la fecha de la orden si puede demostrar quo no comparecio debido a circunstancias excepcionales, o (b) puede presenter un pedimento pars tener otra audiencia en cualquier momento despues de la fecha de la orden si puede demostrar que no recibio el aviso de la audiencia por escrito y que habia facilitado su direction y numero de telefono (o notificado los cambios de direccion o numero de telefono) segun lo previsto, o que estaba encarcelado y no comparecio a la audiencia por motivos ajenos a su voluntad. Si decide solicitar una revision judicial de la orden de deportacion en su ausencia, debe presenter la solicitud de revision en el plazo de 60 dies (30 dias si ha side condenado por un delito grave con agravantes) a partir de la fecha de la orden definitive, y la revision se limitara a decidir si el aviso que recibio es valido, las rezones por las cuales no comparecio a la audiencia y si el gobiemo demostro que puede ser deported.

Ademas de lo anterior, si se ordena su deportacion en su ausencia, no podra, en el plazo de cinco anos despues de la fecha de la orden definitive, tener derecho a los siguientes recursos: salida voluntaria segun la seccion 242 (b) de la ley de Inmigracion y Nacionalidad (NA); suspension de la deportacion o de in salida voluntaria segun in seccion 244 de

la INA, y ajuste de condition segun las secciones 245, 248, y 249 de la INA.

Esta copia de la Orden de Presenter Motivos Justificantes que le ha sido notificada constituye la prueba de su registro de extranjero mientras se llevan a cabo los tramites pare su deportacion. La ley le exige que la lleve consigo en todo momento.

Form I-221 (Rev. 6/12/92) N

This Order to Show Cause shall be filed with the Immigration Judge of the Executive Office for Immigration Review at the address provided below. You must report any changes of your address or telephone number in writing to this office:

Debe presenter este Orden de Presentar Motivos Justificantes a la Oficina Ejucutiva de Revision de Inmigracion en In siguiente direccion. Debe notificar cualquier cambio de an domicilio o numero de telefono por escrito a:

The Office of the Immigration Judge
26 FEDERAL PLAZA
ROOM 13130; NEW YORK, NY 10278

Certificate of Translation and Oral Notice

This Order to Show Cause was X was not read to the named alien in the ENGLISH LANGUAGE language,
which is his/her native language, which he/she understands.

Date Signature Printed Name and Title of Translator

Address of Translator (if other than *INS* employee) or office location and division (if INS employee)

(If oral notice was not provided please explain)

| Manner of Service | Alien's Right Thumb Print |
|---|---|
| [X] Personal Service to Alien<br>[ ] Certified Mail - Return Receipt Requested<br>[ ] Alien<br>[ ] Counsel of Record | |

Certificate of Service

This order to Show Cause was served by me at ROSEDALE, NYon 2 March, 1995

Officer's Signature Printed Name Title Office

Alien's Signature (acknowledgement/receipt of this form)
(Firma de extranjero/acuse de recibo)

Request for Prompt Hearing and Waiver of 14-Day Minimum Period
(Solicited de audiencia inmediata y renuncia al ptazo minimo de 14 dins)

To expedite determination of my case, I request an immediate hearing, and waive my right to the 14 day notice.
(Para agilizar la decision sobre mi caso, solicit una audiencia inmediata y renuncio a mi derecho a un plazo minimo de 14 dies.)

Signature of Respondent (Firma de demandado)

Date (Fecha)